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C O N F I D E N T I A L SECTION 01 OF 04 MANILA 002761

SIPDIS

E.O. 12958: DECL: 11/07/2018
TAGS: [PREL](#) [MARR](#) [KCRM](#) [CASC](#) [RP](#)
SUBJECT: LANCE CORPORAL SMITH - CASE SUMMARY

REF: A. 2008 MANILA 2323 (MARINE JUDICIAL CASE:
CONTINUED CLOSE COORDINATION VITAL)
[1](#)B. 2008 MANILA 2163 (MARINE CASE UPDATE: SUPREME
COURT TO HEAR CUSTODY ARGUMENTS)
[1](#)C. 2007 MANILA 4015 (MARINE CASE UPDATE: APPEALS
COURT DECISION NO LATER THAN OCTOBER 2008)

Classified By: Ambassador Kristie A. Kenney for reasons
1.4 (b) and (d).

[1](#)1. (C) SUMMARY: Three years after his arrest on rape charges and subsequent conviction, U.S. Marine LCpl Smith is accommodated on the U.S. Embassy grounds while his appeal is in the Philippine judicial system, in accordance with the U.S.-Philippine Visiting Forces Agreement. The case of LCpl Smith touched a nationalist nerve in the Philippines, as have such cases in Japan. Resulting political pressures nearly led to the abrogation of the Visiting Forces Agreement, which would end all U.S. military deployments in the Philippines, including for training exercises, ship visits, and the 600 U.S. forces of JSOTF-P targetting terrorists in the Muslim South. This case has been at the top of the U.S. Embassy's agenda, both with the Philippine government and internally, since its inception. The Ambassador and key mission members are in frequent, very private discussions with senior Philippine officials on finding a way to resolve what is a very difficult situation for LCpl Smith and his family, as well as for the U.S.-Philippine relationship. Internally, for Smith's welfare, the DCM chairs a weekly meeting of key mission personnel and Smith's III MEF handlers to ensure his interests are best protected. END SUMMARY.

INTRODUCTION

[1](#)2. (C) On the third anniversary of LCpl Smith's detention at U.S. Embassy Manila -- the only such arrangement at a U.S. embassy in the world -- we think it appropriate to recap LCpl Smith's stay on Chancery grounds. Except for the three-week period immediately following the verdict, Smith has been in U.S. custody. He has lived in comfortable accommodations and representatives from III Marine Expeditionary Force in Okinawa have supervised him at all times. The Regional Security Office has spent significant time and resources ensuring Smith's safety and security, including during Smith's appearances in court and during Smith's hospital visits for minor medical procedures. American Citizen Services officers, who attended all trial sessions, also have kept close watch over the case, liaising with Smith's family, and ensuring Smith's rights as a U.S. citizen are respected. The Public Affairs Office continues to field numerous inquiries from the media and has been successful in directing public attention toward the judicial process and away from broader issues of U.S.-Philippine relations. Given the unusual and difficult nature of keeping custody of a convicted U.S. serviceman on Chancery grounds, the DCM chairs

a weekly meeting of Mission and PACOM representatives to ensure proper coordination and appropriate support for Smith.

In a compound secured by the Marine Security Guard 24 hours a day, and with a III MEF representative with him at all times, Smith is held in the safest possible place for him in the Philippines.

ENSURING SMITH'S WELFARE

¶3. (C) From the beginning of this incident in November 2005, American Citizen Services (ACS) officers from the Embassy's Consular Section have continuously watched over Smith to ensure his welfare, conducting an initial visit shortly after Smith's arrest to provide a list of local attorneys and information on the Philippine judicial system. ACS officers then attended all judicial hearings and proceedings and provided daily summaries of trial court activity to the Mission's country team. As per State Department regulations, ACS officers conducted monthly welfare visits to Smith during the pre-trial and trial phases and quarterly visits after Smith's conviction, providing necessities, such as toiletries, and facilitating visits from clergy and volunteers from the American Association of the Philippines. ACS regularly liaised with Smith's family, responding to emails and phone calls on a myriad of issues. While State Department regulations generally do not provide for arrest-related consular services to active duty military personnel, the Mission decided early to provide such services from the beginning, when it was still unclear what role, if any, the U.S. military would play in the case. Since Smith's

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arrest, III Marine Expeditionary Force (MEF) has provided personnel to watch over Smith continuously. ACS involvement in the case has served as a safety net to ensure that all Smith's needs are addressed.

KEEPING SMITH OUT OF PHILIPPINE JAILS

¶4. (C) Following the December 4, 2006, trial court judge's decision convicting LCpl Smith and ordering that he be immediately transferred to Philippine authorities, the Philippine National Police forcibly took custody of Smith, transporting him over the Mission's objections to the Makati City jail. The Mission immediately went into overdrive, strenuously arguing with key Philippine officials that the judge's order violated the Visiting Forces Agreement and would strain a very productive bilateral relationship. Based on reports from American Citizen Services officers, who routinely deal with Americans incarcerated in Philippine facilities, the Mission was seriously concerned about Smith's welfare if he were placed in a Philippine jail. Philippine prisons are notorious for their squalid conditions: some have no indoor plumbing, forcing inmates to use a ditch; inmates pool their resources to buy potable water; some have insufficient mattresses for all inmates, requiring them to sleep in shifts; medical care is often poor and tuberculosis is rampant; food rations are inadequate, compelling U.S. and other foreign missions to provide "loans" to their citizens to supplement their food intake. Furthermore, Mission officials were also seriously concerned that LCpl Smith, as a convicted rapist, would not fare well if incarcerated with the general prison population.

¶5. (C) Against this backdrop, Mission officials successfully pressed for an arrangement with jail authorities whereby LCpl Smith would be housed temporarily in the warden's office until Smith's legal custody could be sorted out by the Philippine government. In addition, jail authorities agreed to allow Mission personnel to accompany LCpl Smith 24 hours a day, seven days a week, prompting the Mission to quickly organize a group of volunteers to safeguard Smith's welfare

in 8-hour shifts around the clock. Dozens of U.S. Embassy personnel signed up for this duty, several establishing lasting friendships with LCpl Smith during midnight shifts with him at the jail. Meanwhile, the Ambassador successfully negotiated an agreement with the Foreign Secretary to transfer Smith to U.S. custody in accordance with the Visiting Forces Agreement. On December 29, over three weeks after Philippine authorities forcibly took custody of Smith, the Ambassador persuaded Secretary of Justice Gonzalez to transfer custody of Smith back to the U.S. Embassy.

ACCOMMODATIONS

16. (C) Smith was initially housed in a room in the Rowe Building of the Chancery. However, because of Embassy construction, Smith was later moved to a new, more private, CONEX-type trailer, 10 x 12 square feet, funded by III MEF and coordinated by the Embassy's General Services Office. The facility is furnished with air-conditioning and basic amenities and necessities, including television, telephone, and internet service. He has access to fitness and sports facilities as part of a daily workout regimen, and is supervised 24 hours a day by representatives from III MEF. Smith receives regular visits from his pastors and lawyers and from members of Embassy community. He also has received visits from his family in the U.S. and from several U.S. Marine Corps General Officers, including the Commanding Officer of III MEF in Okinawa. Finally, Smith is visited routinely by Philippine officials, including Department of Interior Undersecretary Marius Corpus.

17. (C) During a visit to Manila in October, LCpl Smith's mother raised several concerns regarding his accommodations, all of which were immediately addressed by the ACS chief, Embassy General Services, and III MEF representative. Among the actions taken by Post to enhance Smith's welfare were installation of a smoke detector and new fire extinguisher in the trailer, servicing of the air conditioner, which had been leaking, and replacement of the carpet. Ms. Smith also inquired whether he could spend more time outside his trailer. While LCpl Smith cannot freely move about the Chancery grounds, there are no restrictions on the time he spends outside his trailer within a limited area. In a meeting with the Ambassador during Smith's parents' October visit, the Ambassador reiterated to them USG commitment to

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bring this case to a fair resolution as quickly as possible and, in the interim, to make Smith's detention as comfortable and humane as possible under the circumstances.

SAFEGUARDING SMITH'S SECURITY

18. (C) Given the intensely charged atmosphere this case has engendered, safeguarding LCpl Smith's safety and security has proven to be a significant challenge. Despite the many groups that have expressed anti-Smith sentiment, the Regional Security Officer (RSO) has kept him safe, transferring him securely and without incident to and from the Embassy to trial proceedings when Smith's presence was required and to the hospital for minor medical procedures. In the last three years, over 70 demonstrations by various activist organizations have occurred at the Embassy denouncing Smith, the VFA, and U.S. military presence in the Philippines. The vast majority of these potentially volatile situations have remained peaceful and, with very minor exceptions, have not resulted in injuries or property damage. In a compound secured by the Marine Security Guard 24 hours a day, and with a III MEF representative with him at all times, Smith is held in the safest possible place for him in the Philippines.

ADDRESSING THE MEDIA

¶9. (C) The Smith case was, statistically, the most reported story in the Philippines in 2006, garnering front-page space nearly every day during the trial. Public opinion polling point up the political pressures of Smith's case. Confidential Embassy-funded polling of Filipino opinion conducted over the last three years by the most respected polling company in the Philippines consistently indicates that the vast majority of the Philippine people -- across socioeconomic levels and throughout the country -- believe that LCpl Smith is guilty and should serve his entire 40-year sentence; only seven percent of respondents believe Smith should be acquitted. Over 70 percent of people surveyed believed that U.S. military personnel do not respect Philippine laws regarding the Smith case. The Embassy's Public Affairs Office has been bombarded with countless media inquiries regarding the incident, LCpl Smith, the VFA, U.S. military engagement in Mindanao, and other related matters for the past three years.

¶10. (C) Mission officials, who are queried about the Smith case constantly, have sought to direct public attention toward the judicial process and away from broader issues of U.S.-Philippine relations. The spillover potential continues, as demonstrated by a recent Supreme Court hearing on Smith's custody, which turned into a broader discussion of bilateral military issues (ref B). Our combined efforts and contacts with key Philippine officials over the last three years have helped insulate the VFA from harmful effects stemming from the case that could have seriously damaged our military and counterterrorism cooperation (ref A). Excellent coordination with elements of the U.S. military has produced successful public programs -- such as Operation Goodwill with III MEF -- to improve the image of the U.S. Marine Corps here.

INTERAGENCY COORDINATION

¶11. (C) Reflecting the vital importance the Mission attaches to LCpl Smith's well being, the DCM has chaired a weekly meeting for the last three years of key Mission agencies and PACOM representatives to ensure proper coordination and appropriate support to Smith. The Marine Case Working Group brings together III MEF representatives at Post, the Regional Security Officer, the Public Affairs Officer, Political Counselor, American Citizen Services Chief, U.S. military representatives from JUSMAG and others to discuss Smith's welfare, security issues, public affairs. Through this weekly meeting, Post continually monitors Smith's welfare to ensure his needs are being met in a manner appropriate to his circumstances.

DIPLOMATIC EFFORTS

¶12. (C) Throughout the three full years that Smith's trial and custody have spanned, the Ambassador and Embassy officers have consistently pressed Smith's case at the most senior

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levels of the Philippine government, urging a just and rapid resolution to this situation. In numerous meetings with key Philippine government officials, including the President, Foreign Secretary, Executive Secretary, National Security Advisor, Secretary of the Interior and Local Government, Secretary of National Defense, and others, the Ambassador, DCM, and country team members have stressed that the U.S. has adhered to the letter and spirit of the Visiting Forces Agreement. We have emphasized that it is similarly incumbent on the Philippine government to adhere to its obligations under the VFA. As this case continues its course, the Ambassador and other Embassy officials have underscored that

it is up to the Philippine government to move rapidly and fairly to ensure a legitimate and dignified outcome to this long and difficult ordeal.

COMMENT:

¶13. (C) As we have discussed with senior members of the U.S. military, we believe we can ultimately work out a solution to this case. As the first such arrest/conviction under the U.S.-Philippines Visiting Forces Agreement, there are important ramifications for our mil-mil and overall relationship. U.S. unilateral solutions could remove LCpl Smith from Philippine jurisdiction, but such a blatant violation of our Visiting Forces Agreement with the Philippines would jeopardize the status of some 600 U.S. Special Forces deployed in the Philippines, imperil our military exercises, and end the strong counter-terrorism relationship the United States has with the Philippines. Senior Philippine Government officials recognize that this case is not a winner for either of our countries and, as LCpl Smith's appeal moves through the judicial process, we will continue to work with them on a dignified solution.

KENNEY